

1                   BEFORE THE POLICE BOARD  
2                   OF THE CITY OF CHICAGO  
3       IN THE MATTER OF CHARGES                   )  
4       FILED AGAINST                                ) Case No. 13PB2827  
5       SERGEANT DUANE A. BENNETT.               )  
6  
7                   REPORT OF THE VIDEOTAPED PROCEEDINGS  
8       had at the hearing in the above-entitled matter  
9       before Ms. Jacqueline A. Walker, Hearing  
10      Officer, at 30 North LaSalle Street, Suite  
11      1240, Chicago, Illinois, on May 21, 2013, at  
12      the hour of 10:15 a.m.  
13      - - - - -  
14      APPEARANCES:  
15               CITY OF CHICAGO  
16               DEPARTMENT OF LAW  
17               BY: MR. PATRICK POLK  
18                   30 North LaSalle Street  
19                   Suite 1020  
20                   Chicago, Illinois 60602,  
21                   on behalf of the Superintendent;  
22               MR. DANIEL Q. HERBERT  
23                   On behalf of Respondent;  
24               POLICE BOARD OF THE CITY OF CHICAGO  
             MR. MAX CAPRONI

1       **HEARING OFFICER WALKER:** Next matter  
2       before the Police Board is that of Sergeant  
3       Duane A. Bennett, case number 13-2827.  
4       **MR. POLK:** Patrick Polk for the  
5       Superintendent.  
6       **MR. HERBERT:** And good morning, Madam  
7       Hearing Officer, Counsel, ladies and gentlemen  
8       of the Board. My name is Dan Herbert and I  
9       represent Duane Bennett.  
10      **HEARING OFFICER WALKER:** Okay. This  
11      matter is set for hearing today.  
12               Is the Department ready to  
13      proceed?  
14      **MR. POLK:** We are.  
15      **HEARING OFFICER WALKER:** Is the Respondent  
16      ready to proceed?  
17      **MR. HERBERT:** Yes.  
18      **HEARING OFFICER WALKER:** Any preliminary  
19      matters on behalf of the Department?  
20      **MR. POLK:** Yes, Hearing Officer.  
21               First we would like to enter the  
22      stipulation that we discussed at the prehearing  
23      conference into the record.  
24      **HEARING OFFICER WALKER:** We'll hold for

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1       the stipulations in a minute. Anything else?  
2       **MR. POLK:** Separately, I realized I would  
3       like to enter the relevant general order from  
4       the Police Department and the Illinois compiled  
5       statute that are referenced in the charges that  
6       I hadn't entered into evidence, I would like to  
7       also enter that.  
8       **HEARING OFFICER WALKER:** We'll do that  
9       momentarily. Anything else?  
10      **MR. POLK:** That's all.  
11      **HEARING OFFICER WALKER:** Anything of a  
12      preliminary nature on behalf of the Respondent?  
13      **MR. HERBERT:** Nothing.  
14      **HEARING OFFICER WALKER:** Mr. Herbert, does  
15      Sergeant Bennett acknowledge receipt of the  
16      charges at least five days prior to today's  
17      date?  
18      **MR. HERBERT:** He does, yes.  
19      **HEARING OFFICER WALKER:** Does he wish to  
20      have those charges read?  
21      **MR. HERBERT:** No. We'll waive formal  
22      reading.  
23      **HEARING OFFICER WALKER:** How does he plead  
24      to the charges?



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1 **MR. HERBERT:** Pleads not guilty.  
2 **HEARING OFFICER WALKER:** Okay. All right.  
3 On behalf of the Department, we will start with  
4 an opening statement, please, Mr. Polk.  
5 **MR. POLK:** Yes. Hearing Officer Walker,  
6 members of the Board, counsel.  
7 Sergeant Duane Bennett is charged  
8 with violating the rules and regulations of the  
9 Chicago Police Board. He is charged with  
10 violating a law or ordinance impeding the  
11 Department's efforts to achieve its policies  
12 and goals, or bringing discredit upon the  
13 Department and disobeying an order or  
14 directive, whether written or oral.  
15 All of the essential facts are  
16 uncontested and he should be dismissed from the  
17 Chicago Police Department.  
18 On July 10th, 2012, Sergeant  
19 Bennett was selected for a random drug test.  
20 The first screening test was  
21 positive for marijuana metabolites. A second  
22 test was performed and it conformed that his  
23 urine contained a specific marijuana metabolite  
24 at a concentration of 33 nanograms

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1 milliliter.  
2 He stipulated that the test was  
3 properly performed; that there was a valid  
4 chain of custody throughout the testing  
5 process. He's also stipulated to the results  
6 of the drug test. He does not contest the  
7 essential facts behind the charges against him.  
8 You will hear testimony from Dawn  
9 Hahn from Quest Diagnostics. She will explain  
10 the technology behind the tests that Quest  
11 performed and how Sergeant Bennett's drug test  
12 results are internally consistent.  
13 The Superintendent cannot  
14 tolerate an officer violating the rules and  
15 regulations of the Police Department in this  
16 manner.  
17 The Superintendent respectfully  
18 requests that you separate Sergeant Bennett  
19 from the Department.  
20 **HEARING OFFICER WALKER:** Thank you,  
21 Mr. Polk.  
22 Mr. Herbert.  
23 **MR. HERBERT:** Good morning, again. It's  
24 my pleasure to represent Sergeant Duane

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1 Bennett.  
2 Mr. Bennett is a 49-year-old man,  
3 married man, father of three children. Grew up  
4 in the Chicago-land area. His kids are also  
5 raised in the Chicago-land area. They attended  
6 Mount Carmel high school. One of them  
7 graduated from there. Is currently attending  
8 Moraine Valley. His other son is a junior at  
9 Mount Carmel. And his daughter is currently  
10 going into eighth grade.  
11 Sergeant Bennett lives with his  
12 three children along with his wife who will be  
13 a witness in this case as well.  
14 Mr. Bennett is a Morgan Park High  
15 School graduate. And he also graduated from  
16 Oklahoma Christian University in 1987, wherein  
17 he earned his degree in business  
18 administration.  
19 He also was an active athlete  
20 there where he played on the baseball team in  
21 college.  
22 As I stated, Sergeant Bennett has  
23 been a police officer for the Chicago Police  
24 Department for 22 years.

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1 His record is nothing short of  
2 exemplary.  
3 The record which will be admitted  
4 to the Board shows he is a highly, highly  
5 decorated police officer, both as a patrolman  
6 and also as a sergeant.  
7 What is more, his record will  
8 show he's never been disciplined by the Chicago  
9 Police Department.  
10 And it's important in the context  
11 of this case that we look at the character of  
12 Sergeant Bennett. His character is once again  
13 exemplary. He's active in his community. He's  
14 a volunteer coach of the Ridge-Beverly little  
15 league baseball community. He's coached  
16 basketball at Sutherland Elementary.  
17 What brings us here today as  
18 Mr. Polk stated in his opening is a positive  
19 drug test for the use of marijuana.  
20 Now, when Sergeant Bennett  
21 received the news that he had tested positive  
22 for marijuana, his reaction was that of  
23 somebody that was completely innocent.  
24 His reaction was, I don't know



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1 how this could be. I don't smoke marijuana.  
2 There has to be a mistake.  
3 As the evidence will show, he  
4 went down to internal affairs to give a  
5 statement, and his answers were the same there  
6 as they're going to be at the Board when he  
7 testifies, and that is that I didn't smoke  
8 marijuana. There has to be a mistake.

9 He racked his brain to come up  
10 with somehow a reason as to why this false  
11 result could have happened.

12 And what the evidence will show  
13 about the result in this matter is, the  
14 evidence is above the minimal threshold level;  
15 however, as our expert Dr. James O'Donnell --  
16 who is one of the leaders in the community of  
17 pharmacological studies and has testified in  
18 front of this Board, as well as numerous courts  
19 within Illinois, over 350 times he served as an  
20 expert witness, both for prosecution and  
21 defense. Both for respondents and moving  
22 parties. The evidence will show that this  
23 level is of such a minimal level, the level  
24 that was tested for, that it's more likely than

1 His explanation is substantial.  
2 And it's substantial because it supports the  
3 doctor -- the doctor's opinion that this was an  
4 environmental exposure.

5 What we're going to ask from the  
6 Board is that Sergeant Bennett be given the  
7 benefit of doubt in this case.

8 We need to look at Sergeant  
9 Bennett and this positive test in the complete  
10 and proper context. And that is within the  
11 full utilization of the totality of  
12 circumstances.

13 And I believe that at the  
14 conclusion of this case, after looking at it in  
15 that light, it's going to be clear that Duane  
16 Bennett's exposure to marijuana was clearly  
17 from environmental exposure and not from the  
18 intentional use of which -- and the  
19 significance of that is that Sergeant Bennett  
20 certainly, certainly does not deserve to be  
21 fired based upon being exposed to marijuana in  
22 an innocent manner, being exposed to it in a  
23 manner that was a result of him conducting his  
24 job as a police officer.

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1 not that the level, the positive test, was a  
2 result from environmental exposure versus  
3 intentional use.

4 Duane Bennett talked about --  
5 when he was racking his brain to figure out  
6 what could cause his positive result, he talked  
7 about possibilities which may have led to this  
8 result.

9 As I've stated, he was a police  
10 officer for 22 years. He's taken dozens of  
11 drug tests, and he's never flunked a drug test  
12 until this test at issue.

13 He talked about how his son -- he  
14 had caught his son smoking marijuana on a day  
15 prior to this test.

16 He had talked about how as a  
17 sergeant in the police department he had been  
18 exposed to marijuana on numerous occasions,  
19 both from entering rooms where fresh marijuana  
20 had been smoke end as well as handling  
21 marijuana.

22 He's also talked about how he  
23 attended a concert and there was marijuana  
24 being smoked.

1 I'm going to ask the Board at the  
2 conclusion of this case to find him not guilty  
3 of the charges that are against him. Thank  
4 you.

5 **HEARING OFFICER WALKER:** Okay. Thank you,  
6 Mr. Herbert. All right.

7 Mr. Polk, before call your first  
8 witness, we'll take those stipulations now.

9 **MR. POLK:** Do I tender them or read them?

10 **HEARING OFFICER WALKER:** You can just  
11 tender them. Has Mr. Herbert signed it?

12 **MR. HERBERT:** Yes.

13 **MR. POLK:** Yes.

14 **HEARING OFFICER WALKER:** Okay. You can  
15 just tell us briefly for the record what it  
16 pertains to or what they pertain to.

17 **MR. POLK:** For the record, the two parties  
18 stipulated that essentially the test was  
19 performed properly; that the chain of custody  
20 was intact; and that -- and to the actual  
21 result of the two tests themselves, that the  
22 first test was positive as a screening test and  
23 that the second test, the confirmation test,  
24 found 33 nanograms milliliter. And attached



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1 are three Joint Exhibits. One, the specimen  
2 affidavit. Two, the collection. And three,  
3 the printout of the drug detail report itself.

4 **HEARING OFFICER WALKER:** All right. And,  
5 Mr. Herbert, are you in agreement with those  
6 stipulations?

7 **MR. HERBERT:** Yes.

8 **HEARING OFFICER WALKER:** Fine. Anything  
9 else?

10 **MR. POLK:** Just those two. The general  
11 order pertaining to drug tests and the ILCS  
12 provision that I mentioned.

13 **HEARING OFFICER WALKER:** For judicial  
14 notice?

15 **MR. POLK:** Yes.

16 **HEARING OFFICER WALKER:** I'll take those  
17 as well. Thank you.

18 So the stipulations will be Joint  
19 Exhibit 1, and the two documents, as you have  
20 them marked correctly, judicial notice will be  
21 Exhibits 1 and 2.

22 **MR. POLK:** Thank you.

23 (WHEREUPON, said  
24 document was marked as

1 world.

2 Q. What is your position at Quest?

3 A. I am a responsible person and  
4 operations -- laboratory operations manager.

5 Q. And what are your duties and  
6 responsibilities in those two roles?

7 A. My duties include just the day-to-day  
8 operations of the laboratory. Also as  
9 responsible person my duties include making  
10 sure that there is a standard operating  
11 procedure; that the employees have been trained  
12 on that standard operating procedure; that  
13 there's a training program for the employees;  
14 that we have enough staff; that we have set  
15 quality control limits for our assays, and that  
16 they have been -- constantly being reviewed;  
17 that we also have validated our methods and  
18 that they'll hold up forensically. PT  
19 corrective actions. Inspection corrective  
20 actions.

21 Q. How long have you held your current  
22 position at Quest?

23 A. I have been laboratory operations  
24 manager since I believe September of 2010. And

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1 Joint Exhibit No. 1 for  
2 Identification.)

3 **HEARING OFFICER WALKER:** Call your first  
4 witness, please.

5 **MR. POLK:** The Superintendent calls Dawn  
6 Hahn.

7 (Witness was duly  
8 sworn.)

9 DAWN HAHN,  
10 called as a witness herein, after having been  
11 first duly sworn, was examined and testified as  
12 follows:

13 **DIRECT EXAMINATION**  
14 **BY MR. POLK:**

15 Q. Good morning.

16 A. Good morning.

17 Q. Could you please state and spell your  
18 name for the record.

19 A. Sure. Dawn Hahn. D-A-W-N. H-A-H-N.

20 Q. Who is your employer?

21 A. Quest Diagnostics in Lenexa, Kansas.

22 Q. What is Quest Diagnostics?

23 A. Quest Diagnostics is a leading  
24 provider of clinical and drug testing in the

1 I was interviewed by the National Laboratory  
2 Certification Program and named responsible  
3 person in August of 2006.

4 Q. What other positions have you held  
5 previously at Quest?

6 A. I have been positive certifying  
7 scientist, a negative certifying scientist. I  
8 have been a manager of the laboratory when it  
9 was lab one. I was director of the laboratory.

10 Q. How long have you worked for Quest  
11 total?

12 A. About 25 and a half years.

13 Q. What is your educational background?

14 A. I have bachelor of arts degree in  
15 medical technology, and I am ASCP certified as  
16 a medical technologist. And then I have my  
17 years of experience here as employer solutions  
18 or drug testing.

19 Q. Do you have any other training?

20 A. I have -- besides being ASCP certified  
21 for my med tech degree, I also hold a  
22 certification in -- it's called FTCB, Forensic  
23 Toxicologist Certification Board.

24 I also -- being a national



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1 laboratory inspector and a director of a SAMHSA  
2 certified lab, I attend the annual SOFT  
3 meeting, it's the Society of Forensic  
4 Toxicologists, and they hold an annual meeting  
5 where they offer training every year for the  
6 inspectors and lab directors.

7 Q. What do you need in order to be  
8 certified?

9 A. In order to be certified as a  
10 forensic -- or the SAMHSA certification?

11 Q. Both.

12 A. In order to get your FTCB  
13 certification, you have to sit for an  
14 exam -- first of all, you have to have the  
15 proper educational background, certain number  
16 of hours in chemistry and biology, and then you  
17 are allowed to sit for the test after you've  
18 had three years of forensic toxicology  
19 experience, and it's approximately a four-hour  
20 exam that you have to sit for, and then once  
21 you've passed the exam, then you have to keep  
22 it up by continuing education.

23 Q. Have you been published?

24 A. I have a few publication articles out

1 A. Department of Health and Human  
2 Services.

3 Q. What does certification involve?

4 A. The initial application for  
5 certification for your SAMHSA certification  
6 is -- first of all, you have to pass three  
7 rounds of PTs, and PTs are proficiency testing  
8 samples where they -- they being the NLCP  
9 program, send you unknowns. They know what the  
10 concentrations are or what's in those samples  
11 but the laboratory does not. So you have to  
12 test these samples. I think there's usually  
13 between 20 and 25 per PT set. And then you  
14 send your results back into the program, and  
15 they grade you both on accuracy and  
16 quantification.

17 Once you have passed your three  
18 rounds of PT, they set you up for your initial  
19 inspection, where they come in and they review  
20 your procedures, your standard operating  
21 procedures, your quality control. They start  
22 interviewing the staff. And then if you've  
23 passed that inspection, then they come back  
24 again in three months. And then you're on -- I

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1 there on oral fluid heroin.

2 Q. You've already touched on this a  
3 little bit, but what -- in general what  
4 professional associations do you belong to?

5 A. Society of Forensic Toxicology, the  
6 SOFT, MATT, which is Midwest Association of  
7 Toxicology and Therapeutic drug monitoring.  
8 I'm also a national laboratory certification  
9 program inspector. I'm a CAP inspector which  
10 is College of American Pathologists. I have  
11 state certifications as a supervisor, director  
12 with CAP, Nevada, New York.

13 Q. I'm going to ask you a few questions  
14 about Quest Diagnostics.

15 A. Sure.

16 Q. Is Quest Diagnostics certified by an  
17 agency?

18 A. Sure. We are both -- we are CLIA  
19 certified. We are CAP certified again. That's  
20 the College of American Pathologists. We're  
21 also SAMHSA certified which is the Substance  
22 Abuse and Mental Health Services  
23 Administration, which falls under DHHS.

24 Q. And what's DHHS?

1 guess you want to call it like the circuit  
2 where you get your quarterly PT sets every  
3 year, and then you also get inspected several  
4 times if you're a smaller laboratory category  
5 four and below. They base this all on size of  
6 the laboratory. You get inspected twice a  
7 year. If you are a larger laboratory, a  
8 category five, which we are at here Quest  
9 Diagnostics in Lenexa, you get inspected by the  
10 NLCP four times a year.

11 Q. Once certified, can certification be  
12 revoked?

13 A. Yes, it can.

14 Q. How?

15 A. There can be a series of problems that  
16 the laboratories had, such as reporting false  
17 positives, maybe the RP has done something that  
18 they didn't find was ethical. The RP may not  
19 be spending enough time in the lab. They may  
20 not have enough staff to -- for good results.

21 Q. What do you mean by RP again?

22 A. Responsible person.

23 Q. When was your lab initially certified?

24 A. 1994.



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1 Q. Has your lab always maintained  
2 certification?

3 A. Yes.

4 Q. Does your lab conduct urine drug  
5 testing for the City of Chicago?

6 A. Yes.

7 Q. In July of 2012, did your lab conduct  
8 urine drug testing for the City of Chicago?

9 A. Yes.

10 Q. Are there standard procedures that  
11 Quest follows in conducting drug tests?

12 A. Yes, there are.

13 Q. Are these procedures followed in every  
14 case that a test is performed?

15 A. Yes, they are.

16 Q. I'm now going to ask you about the  
17 specific test that we're here to discuss today.

18 I'm showing you what's previously  
19 been admitted into evidence as part of a  
20 stipulation, the third attachment to the  
21 stipulation.

22 **HEARING OFFICER WALKER:** Mr. Polk, hate to  
23 interrupt you. If we have the stipulation  
24 already, where that document is attached, is it

1 **HEARING OFFICER WALKER:** What would be the  
2 necessity for the internal consistency if there  
3 has been a stipulation as to the testing  
4 procedure and the results?

5 **MR. POLK:** Because especially initially,  
6 the Respondent was willing to stipulate to the  
7 numerical results of the drug testing, but then  
8 indicated that he wanted to challenge the  
9 consistency of the results because of the  
10 difference between the initial test and the  
11 confirmation test. And so I just want to  
12 explain how those tests are performed and why  
13 this result makes sense, and it will be very  
14 brief and also just help explain the results  
15 that were stipulated to. And none of this is  
16 in the stipulation.

17 **HEARING OFFICER WALKER:** But the results  
18 themselves have been stipulated to. I see here  
19 number nine, tested positive for 50 nanograms  
20 per mil. Number 10, the confirmation test was  
21 at 33 nanograms per mil.

22 So I'm a little confused as to  
23 why this additional information would be  
24 needed.

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1 necessary for this witness to have that  
2 document?

3 **MR. POLK:** I'm only going to really talk  
4 about the tests that were performed and the  
5 technology behind them. I'm not going to get  
6 into detail about the actual results.

7 It won't focus on the actual test  
8 results which have been stipulated to, but  
9 the -- the actual tests were performed and  
10 particularly because it was mentioned in the  
11 expert report that was brought by the  
12 respondent. I really want to emphasize that  
13 the test results are internally consistent.

14 **HEARING OFFICER WALKER:** Well, maybe we  
15 should just get those, go right to those  
16 questions, because frankly many of the  
17 questions you've asked so far I think are  
18 handled in the stipulations.

19 Is this witness serving as your  
20 expert?

21 **MR. POLK:** No. We'll have a separate  
22 witness as a rebuttal expert to talk about the  
23 environmental factor that has been raised or  
24 will presumably be raised by the Respondent.

1 **MR. POLK:** Because the expert report that  
2 was provided at the prehearing conference  
3 raised the issue of the confirmation test being  
4 particularly low and questioned its accuracy  
5 because the initial test cutoff is 50 nanograms  
6 per milliliter, while the confirmation test  
7 tests specifically at 33 nanograms per  
8 milliliter.

9 I want to prevent any confusion  
10 as to what the two different tests -- they test  
11 for two separate things, and I want to explain  
12 with my witness how these results are  
13 consistent.

14 **HEARING OFFICER WALKER:** Go ahead. But  
15 keep in mind that I'm concerned if we have  
16 stipulations why we're going through the extent  
17 of the certification of Quest Diagnostics and  
18 questions of that nature. All right. Proceed.  
19 Just stick to the area that this witness will  
20 help us -- or help the Board to understand.

21 **MR. POLK:** Thank you.

22 **BY MR. POLK:**

23 Q. As I mentioned, I'm handing you  
24 attachment three to the stipulation.



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1 So looking at that document,  
2 please tell us about the tests that were  
3 conducted on laboratory session number 093273A.

4 **A. It was a ten-panel drug screen with**  
5 **what's called specimen validity testing, and**  
6 **that's creatinine, PH and oxidizing**  
7 **adulterants.**

8 Q. Did the ten-panel drug test include a  
9 test for marijuana?

10 **A. Yes, it did.**

11 Q. What is the name of the first test  
12 that was performed?

13 **A. It's called an initial test or initial**  
14 **screen.**

15 Q. And what type of test is that?

16 **A. The methodology that we use at Quest**  
17 **Diagnostics is enzyme immunoassay.**

18 Q. What is an enzyme immunoassay?

19 **A. An enzyme immunoassay is -- basically**  
20 **it's a competitive binding between an antigen**  
21 **and an antibody. The reagent, one of the**  
22 **antigens is labeled with an enzyme, and then**  
23 **there's basically a color reaction that takes**  
24 **place, and the amount of drug present in the**

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1 sample is directly proportional to the color  
2 change.

3 Q. What is the purpose of the first test?

4 **A. The purpose of the first test is to**  
5 **basically report -- find your negatives and get**  
6 **those reported.**

7 **Anything that appears that there**  
8 **might be something there or presumptive**  
9 **positive then goes on for a confirmation test.**

10 Q. Was it positive in this case?

11 **A. The initial test, yes.**

12 Q. Does the enzyme immunoassay test  
13 detect multiple marijuana metabolites?

14 **A. Yes, it does.**

15 Q. Approximately how many?

16 **A. In the package reagent insert, it**  
17 **showed it had tested for approximately -- I**  
18 **believe it was seven similar -- structurally**  
19 **similar compounds, and all seven did also**  
20 **trigger a positive at very similar**  
21 **concentrations of 50 and a hundred.**

22 Q. What is the lowest level of marijuana  
23 metabolites that would return a positive test  
24 result on the enzyme immunoassay test?

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1 **A. The cutoff is 50, so 50.**

2 Q. 50 what?

3 **A. Nanograms per milliliter. Sorry.**

4 Q. Who determines what the threshold is  
5 to constitute a positive screening test?

6 **A. In many cases, it's the client. Often**  
7 **times the client goes by what's called the**  
8 **SAMHSA cutoffs for the same drugs that the**  
9 **SAMHSA panel tests for.**

10 Q. Do you know what the City of Chicago  
11 Police Department uses for its cutoffs?

12 **A. I believe they follow the SAMHSA**  
13 **guidelines, so in this case it would be a 50**  
14 **screen and 15 confirm, which is consistent with**  
15 **the SAMHSA cutoffs.**

16 Q. What happens after the specimen  
17 screens positive for marijuana metabolites?

18 **A. It goes on for confirmation testing.**  
19 **And when it goes on for confirmation testing,**  
20 **another aliquot from the original bottle is**  
21 **taken off the bottle and it's gone -- goes on**  
22 **to extraction for the particular drug that it**  
23 **screened positive for. After that it goes on**  
24 **to the confirmation instrument, which is GCMS,**

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1 that stands for gas chromatograph mass  
2 spectrometer.

3 Q. What is GCMS?

4 **A. GCMS, first of all, it's the standard**  
5 **in drug testing for identifying a drug. It's**  
6 **two instruments that have been put together, a**  
7 **gas chromatograph and a mass spectrometer. The**  
8 **gas chromatograph separates the compounds that**  
9 **may be in the urine and then the mass**  
10 **spectrometer identifies it, that particular**  
11 **compound, and then quantitates it.**

12 Q. Is GCMS recognized as reliable in the  
13 scientific community?

14 **A. Yes, it is.**

15 Q. And what were the results in this  
16 case?

17 **A. In this particular case, 33 nanograms**  
18 **per milliliter.**

19 Q. And looking at the document in front  
20 of you, it looks like the word metabolite is  
21 singular on the confirmation test. Does that  
22 mean that it detected only a single marijuana  
23 metabolite?

24 **A. At the confirmation you're only**



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1 looking for one. You are looking for the  
2 primary metabolite of marijuana and that  
3 is -- that's a few different names, but  
4 marijuana, or THCA, THC acid, carboxylic THC,  
5 they all mean the same thing.

6 Q. Is that also called THC-COOH?

7 A. Yes.

8 Q. And what is the cutoff level for  
9 marijuana metabolite under the GCMS test?

10 A. 15 nanograms per milliliter.

11 Q. And who determines what the threshold  
12 is to constitute a positive confirmation test?

13 A. Again, it can be client driven or if  
14 they're using the SAMHSA guidelines, it's the  
15 federal register and SAMHSA that determines  
16 what those cutoffs are.

17 Q. And was the marijuana metabolite in  
18 laboratory session number 093273A above that  
19 threshold?

20 A. Yes, it was.

21 Q. Now, specifically I notice that the  
22 confirmation test was 33 nanograms per  
23 milliliter, and that's lower than the threshold  
24 for the initial screening test which was 50

1 Q. Good morning, Ms. Hahn.

2 A. Good morning.

3 Q. How are you?

4 A. Good. How are you?

5 Q. Good. Thanks. You didn't work on the  
6 sample or you didn't do any testing on the  
7 sample that was provided by my client,  
8 Mr. Bennett, in this case, correct?

9 A. No. I mean you are correct. No, did  
10 I not do any testing.

11 Q. And fair to say that your knowledge is  
12 strictly limited to the reports that you have  
13 viewed in this case?

14 A. I guess I'm not following what you're  
15 asking me.

16 Q. Probably a bad question.

17 You don't have any independent  
18 knowledge of Mr. Bennett providing a urine  
19 sample and that urine sample being tested by  
20 Quest?

21 A. All I can tell you that the sample  
22 that was under 093273A was what was tested. I  
23 don't know whose it was or anything like that,  
24 if that's --

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1 nanograms per milliliter. Can you explain how  
2 that happened?

3 A. Sure. We touched on it. The  
4 marijuana screen picks up multiple metabolites  
5 of marijuana, not just THCA, and so it's  
6 looking for, like I said, multiple metabolites  
7 that are in that urine. When you're going to  
8 confirmation, you're just looking for the  
9 primary metabolite that is in urine, and that  
10 is the THC acid or THC-COOH.

11 Q. Is this test result internally  
12 inconsistent?

13 A. No, it's not.

14 Q. Why not?

15 A. Again, you're looking for the multiple  
16 metabolites in the initial test, where in the  
17 confirmation test you are only looking for one  
18 metabolite.

19 MR. POLK: Thank you. No further  
20 questions.

21 HEARING OFFICER WALKER:  
22 Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. HERBERT:

1 Q. Okay. You don't know who tested it?

2 A. I do. It's in the lit package.

3 Q. And that lit package is contained  
4 within the reports?

5 A. Yes. Yeah, we provide all that,  
6 uh-huh.

7 Q. So it would be fair to say that your  
8 review of the reports that's basically --

9 A. Yes, correct.

10 Q. -- that's your knowledge for this  
11 case?

12 A. Yes, yes.

13 Q. And you talked about how certification  
14 can be revoked for certain testing agencies.

15 A. Uh-huh.

16 Q. And you indicated that reporting of  
17 false positives could be grounds for  
18 revocation?

19 A. Could be.

20 Q. Would it be fair to say that false  
21 positives are not uncommon when testing for  
22 drug use?

23 A. Well, they're not common, because  
24 otherwise more labs would be getting revoked.



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1 Q. But they certainly do?

2 A. They do happen, usually it's clerical  
3 errors. Yes, they do happen.

4 Q. Okay. With regard to these drug tests  
5 results, does Quest implement a margin of error  
6 into the results?

7 A. There is -- I don't know if I'm  
8 following, but our quality control, like  
9 when -- we have to run quality control with all  
10 of our confirmation batches, and the quality  
11 control, the acceptable range in the industry,  
12 is plus -- you establish a mean which means you  
13 ran it 20 times and you've determined what that  
14 average is. And then you can be plus or minus  
15 20 percent for your QC. So if your QC can be  
16 plus or minus 20 percent, the specimen probably  
17 would follow that same -- accuracy range, if  
18 that's what you're asking.

19 Q. Okay. So it would be essentially a  
20 20-percent margin of error, correct?

21 A. Accuracy, yes.

22 Q. 20-percent accuracy to the test  
23 results?

24 A. Yes.

1 levels, depending on the client, correct?

2 A. Client, the governing agency,  
3 depending on what they're using, yes.

4 Q. And in this case, for the confirmation  
5 test, the cutoff level or the threshold level  
6 was 15 NGs, correct?

7 A. Correct.

8 Q. And fair to say that other clients use  
9 a higher cutoff level?

10 A. Actually, most use a lower if it's  
11 non-regulated. 15 is about the highest that we  
12 offer for -- the only cutoff that SAMHSA allows  
13 first of all.

14 Most clients if they're in the  
15 non-government sector, they want to go lower.

16 Q. But are you aware of clients that have  
17 higher threshold levels?

18 A. Actually, I'm not.

19 Q. Okay.

20 MR. HERBERT: Nothing further.

21 HEARING OFFICER WALKER: Redirect?

22 MR. POLK: Very briefly.

23 REDIRECT EXAMINATION

24 BY MR. POLK:

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1 Q. And that's 20-percent accuracy plus or  
2 minus the results?

3 A. Plus or minus. That's what we do with  
4 our QC, so...

5 Q. Okay. And you talked about the  
6 different -- the initial test and then the  
7 confirmation test?

8 A. Yes.

9 Q. And the confirmation test, is it the  
10 same sample used for the confirmation test  
11 that's used for the initial test?

12 A. It's the same parent bottle that is  
13 used. We never test out of the original  
14 bottle. We always take what's called -- we  
15 call aliquot, but you're taking off a portion  
16 of that sample for the initial test. And then  
17 that aliquot is discarded and then you take  
18 another portion of the original bottle for the  
19 confirmation test. That way it's two  
20 independent samplings from the parent bottle,  
21 and that parent bottle doesn't get contaminated  
22 that way.

23 Q. Okay. And you talked about how  
24 there's different threshold levels or cutoff

1 Q. You were asked if it was not uncommon  
2 to have false positives. Do you remember that?

3 A. Uh-huh.

4 Q. Do you check for false positives in  
5 your lab?

6 A. It's kind of -- that's kind of a hard  
7 question, hard thing to look for, because  
8 you've already reported that result.

9 Now, the inspectors when they  
10 come in, they do look through your data.

11 Part of the inspection process is  
12 to audit all your -- to audit your records. We  
13 have to send them all of our positives that we  
14 have reported throughout the quarter and then  
15 they pick records to audit. And they look to  
16 verify our accuracy, to make sure that we're  
17 not reporting false positives.

18 So we have an outside agency that  
19 comes in and does that for us quarterly.

20 Q. So part of your inspection process is  
21 you are tested against false positives,  
22 correct?

23 A. They're looking at your data to make  
24 sure what you reported was forensically



1 supported.

2 Q. And --

3 A. So part of that process would be to  
4 make sure that you did report the -- you were  
5 accurate with what you reported, so that your  
6 quantification supported the positive that you  
7 reported.

8 Q. And you get inspected four times a  
9 year you said?

10 A. By SAMHSA, yes. And we have other  
11 inspection agencies as well that do independent  
12 audits and clients that come in and do  
13 independent audits as well.

14 Q. And does your lab pass those  
15 inspections?

16 A. Yes, yes.

17 MR. POLK: Nothing further.

18 MR. HERBERT: Just briefly.

19 RECROSS-EXAMINATION

20 BY MR. HERBERT:

21 Q. You said that inspectors will conduct  
22 an audit of samples, correct?

23 A. Uh-huh. Of records.

24 Q. Do you know if the sample that was

1 break was had.)

2 HEARING OFFICER WALKER: Back on the  
3 record.

4 Before we have the witness sworn  
5 in. I don't know that we had the Department  
6 rest. Of course subject to rebuttal in your  
7 case in chief.

8 MR. POLK: Yes, we rest subject to  
9 rebuttal.

10 HEARING OFFICER WALKER: Respondent's  
11 case. Respondent's first witness. Thank you.

12 (Witness was duly  
13 sworn.)

14 JAMES O'DONNELL,  
15 called as a witness herein, after having been  
16 first duly sworn, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. HERBERT:

20 Q. Good afternoon, Doctor. How are you?

21 A. Good. Thank you.

22 Q. Would you please introduce yourself  
23 and spell your last name for the record?

24 A. James Thomas O'Donnell. O,

1 used in this case was chosen for an audit?

2 A. No, I don't.

3 Q. Do you have any knowledge that  
4 this -- that this result was reviewed by any  
5 inspectors whatsoever?

6 A. No, I don't.

7 MR. HERBERT: Nothing further.

8 MR. POLK: Nothing based on that.

9 HEARING OFFICER WALKER: Thank you. You  
10 may be excused. Don't forget your microphone.  
11 (Witness Excused.)

12 HEARING OFFICER WALKER: Okay. The  
13 Department have any other witnesses?

14 MR. POLK: We have no further witnesses  
15 for our case in chief.

16 HEARING OFFICER WALKER: Okay.  
17 Respondent?

18 MR. HERBERT: I have witnesses. And I  
19 told them to come here a little bit later.

20 HEARING OFFICER WALKER: Off the record a  
21 moment.

22 (Discussion off the  
23 record.)

24 (WHEREUPON, a luncheon

1 apostrophe, D-O-N-N-E-L-L.

2 Q. And, Dr. O'Donnell, by whom are you  
3 employed?

4 A. I'm employed by the Rush Medical  
5 College and also by my private firm Pharma  
6 Consultant, Incorporated.

7 Q. And what other work do you do  
8 professionally?

9 A. All my work is encompassed between my  
10 teaching and consulting practice.

11 Q. Okay. And are you licensed as a  
12 pharmacist?

13 A. I am. I've been licensed since 1969.

14 Q. Please explain what pharmacology is.

15 A. Pharmacology is study of the actions  
16 of drugs on the body, both in man and animals.  
17 It encompasses discovery, identification,  
18 analysis, evaluation, testing, and also it  
19 encompasses teaching the topic to those who  
20 need to learn pharmacology in order to practice  
21 their professions, including physicians,  
22 nurses, pharmacists, podiatrists, dentists.

23 Q. And, Doctor, prior to the hearing, you  
24 tendered a CV in this case?



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1 A. Yes, sir.

2 Q. Okay. And it's already been  
3 stipulated to with the parties you are an  
4 expert in the area of pharmacology.

5 I notice that one of the entries  
6 in your CV talks about some of the consultant  
7 work you did and that being that you worked for  
8 the Chicago Police Department and the City of  
9 Chicago at one point?

10 A. Yes. The work for the police  
11 department was a singular engagement, pro bono  
12 engagement, as a matter of fact, teaching  
13 narcotics officers the pharmacology of the some  
14 of the drugs they were arresting people for  
15 selling.

16 I have a fairly ongoing  
17 consulting relationship with law department in  
18 civil matters, and I've testified before the  
19 Police Board for the City at least once.

20 Q. If I can ask you what is -- is  
21 toxicology a part of pharmacology?

22 A. Yes, it is. Pharmacology, the actions  
23 of drugs, we prescribe and use them for  
24 beneficial effect, but they clearly have toxic

1 interpreted urine drug tests and other media  
2 for drug tests over the past 30, 35 years.

3 Q. And you published on that topic as  
4 well as you've described?

5 A. I have.

6 Q. And you've testified in legal matters  
7 aside from the testimony that you provided for  
8 the Police Board that you talked about?

9 A. On drug testing?

10 Q. Yes.

11 A. Yes, frequently.

12 Q. If you can describe the  
13 pharmacokinetics of cannabis?

14 A. Well, cannabis is a substance that has  
15 multiple metabolites. Some are described  
16 upwards of 20. The principle active ingredient  
17 or ingredient that people smoke it or consume  
18 it for is what we refer to as THC,  
19 tetrahydrocannabinol. And it can be absorbed  
20 orally, topically, smoking. Technically you  
21 could even inject it. The half life or the  
22 period of time of greatest effect of THC is  
23 limited to several hours.

24 As I described it, especially

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1 effects. And indeed as part of my teaching  
2 responsibilities, I teach toxicology  
3 principles.

4 Q. And what is your background regarding  
5 pharmacology as it relates to toxicology?

6 A. Well, part of the board certification  
7 is an examination on toxicological principles  
8 and testing. I've published five books very  
9 heavily steeped in pharmacology -- excuse me,  
10 pharmacology and toxicology, primarily the  
11 adverse effects of drugs. For instance, three  
12 of them are titled Drug Injury.

13 The assay work that's used in  
14 developmental pharmacology is the same assay  
15 that is part of the safety pharmacology or  
16 testing. And I've spent both in college  
17 learning the instrumentation, the science  
18 behind the analytical chemistry, and also  
19 research sabbatical what I thought was mid  
20 career 30 years ago.

21 Q. Have you had any training or  
22 experience interpreting urine drug samples?

23 A. Yes. It's -- the training is part of  
24 the analytical chemistry experience. I've

1 through smoking, develop several metabolites  
2 that have longer half life, which is  
3 technically limited to the amount of time it's  
4 in the blood. But a very long what I call body  
5 residence time. That's not a technical term.  
6 But it helps explain the fact that the -- when  
7 the marijuana goes into the fat, it's stored in  
8 the fat because it's highly what called  
9 lipophilic. And the reason why, for instance,  
10 you can detect a positive marijuana metabolite  
11 seven days, 14 days, even 30 days after  
12 exposure is because they -- the metabolite that  
13 is trapped in the fat eventually leaches out of  
14 the fat and is filtered in the kidney and  
15 deposited in the bladder. The bladder being a  
16 collection device, concentrates or makes the  
17 relative amount of the marijuana metabolite in  
18 a volume of urine much, much greater than could  
19 be detected in blood. Therefore it's not  
20 detected in blood, but it is in urine. So it  
21 is a -- it has -- the kinetics is -- I should  
22 define that as really a timeline, how long the  
23 drug stays in the body. It's a very unusual  
24 kinetics. The kinetics will vary from one



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1 metabolite to another.

2 But the important take-home  
3 message is the active ingredient is  
4 short-lived. It's gone from the body within a  
5 day usually. But metabolites have very long  
6 body residence time.

7 Q. Okay. And are there factors regarding  
8 elimination?

9 A. Absolutely. Absolutely. It  
10 could -- it's a factor of dose. It's a factor  
11 of frequency of use. Or chronic use. It's a  
12 factor of the amount of fat content in the  
13 body. Factor of hydration. Factor of diet.  
14 How much protein is in the diet and therefore  
15 nitrogen in the urine.

16 Indeed, the -- repeating the same  
17 dose of exposure of marijuana to the same  
18 individual over consecutive days will result in  
19 different -- consecutive periods allowing for  
20 wash-out, will result in different levels  
21 detected, because the detection level of  
22 metabolite in the urine changes by the hour of  
23 the day and the degree of hydration of the  
24 subject on that day.

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1 So a high degree of variance in  
2 the amount of marijuana metabolite that is  
3 excreted in the urine, collected in the urine,  
4 and therefore available for testing.

5 Q. Okay. And I know you talked briefly  
6 about the lungs being a good absorption  
7 surface.

8 My question to you is, can  
9 adulterants be absorbed in the lungs?

10 A. Anything we breathe can be absorbed  
11 through the lungs. We breathe exhaust fumes.  
12 We administer -- that's how we get oxygen, we  
13 breathe.

14 The lungs are probably more  
15 efficient for absorption than the gut is for  
16 absorption of nutrients. So anything that's  
17 either particulate matter in the air or even  
18 volatilized or gas matter, if it enters the  
19 lungs it has potential for absorption.

20 The same can be said about the  
21 skin, although certainly not at the same  
22 efficiency, but anything that's deposited on  
23 the skin, unless it's something like a Lithium  
24 ion, a very highly polar molecule, certainly

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1 has the potential for absorption from the skin.

2 And we have -- we generally have  
3 30 or so therapeutic agents that we actually  
4 administer to patients where we infuse a patch  
5 with a drug and put the patch on the patient  
6 either daily or weekly for a chronic exposure  
7 of the substance.

8 So lungs, therapeutic or  
9 adulterant, environmental, gaseous, particulate  
10 and to a lesser extent skin.

11 Q. So lungs can certainly absorb  
12 secondhand smoke?

13 A. Absolutely. That's one of the driving  
14 forces for eliminating smoking in public and  
15 private places, because even a person who  
16 elects -- the person who wants to avoid smoking  
17 and voluntarily does not suffers from the  
18 damage of the secondhand smoke just by the fact  
19 that it's in the air and they inhale it.

20 Q. Doctor, approximately how many times  
21 have you interpreted urine drug screens?

22 A. Well, at least several hundred, if not  
23 approaching a thousand. 30 years.

24 Q. And describe, you touched on it

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1 earlier, but any written or published articles  
2 in the field of toxicology?

3 A. I have several chapters in three of my  
4 books. One is specifically forensic drug  
5 testing that describes urine drug testing and  
6 the methodologies used. A few chapters in my  
7 books are entitled Forensic Pharmacist and the  
8 Roles of Interpretation. And then I have in  
9 the same books a different chapter on -- titled  
10 Recreational Drugs, and the drugs that are  
11 addressed to a great extent are alcohol,  
12 marijuana and cocaine, and within those  
13 chapters I think there should be drug testing  
14 discussed in those chapters as well.

15 And then I've published for a  
16 nursing newspaper interpretation of toxicology  
17 tests, including urine drug tests.

18 Q. Okay. And have you written or  
19 published any articles concerning marijuana?

20 A. What I've described. I don't know  
21 that I have any freestanding articles. But my  
22 chapters definitely discuss marijuana to a  
23 great extent.

24 Q. Okay. Have you ever lectured or



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1 taught others about the interpretation of urine  
2 drug screens?  
3 A. Yes. Several times.  
4 Q. Have you ever been qualified as an  
5 expert to provide testimony?  
6 A. I've testified in court over 350  
7 times. On the question of urine drug screens,  
8 there have been a few. Most of the time when  
9 I'm engaged in urine drug screen matter, the  
10 issue of the urine drug test is not allowed  
11 into court because of the lack of scientific  
12 validity of the test.  
13 Q. Okay.  
14 A. So I don't go to court on it, because  
15 my work is before court to help the lawyers  
16 argue that it shouldn't be discussed.  
17 Q. Okay. And do you testify strictly for  
18 defendants or respondents?  
19 A. No, no, testify on both sides. I  
20 think in my career my third Police Board  
21 hearing. I had one of which was for the  
22 sheriff's office or involving a deputy sheriff,  
23 in a sheriff board. Majority of my  
24 consultations and testimony is in civil

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1 matters. And it's certainly equally divided in  
2 there. And fairly criminal matters, I work for  
3 prosecutors but mostly for defendants.  
4 Q. And what subjects have you testified  
5 to?  
6 A. Oh, half my work is involving  
7 recreational drugs, primarily alcohol, but  
8 marijuana is frequent, followed by cocaine and  
9 methamphetamine.  
10 And then a whole arena of  
11 prescription drugs, even over-the-counter  
12 drugs, describing the injury, the mechanism of  
13 injury, or did the drug cause the alleged  
14 injury.  
15 And then finally, since I am a  
16 pharmacist, I do testify on the standard of  
17 care of pharmacists.  
18 Q. And you testified about some of your  
19 publications. If I can just identify this book  
20 as Respondent Exhibit No. 1. And is this one  
21 of the publications that you testified?  
22 A. Yes. This the third edition of Drug  
23 Injury, Liability, Analysis and Prevention.  
24 And the two chapters I described, the

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1 recreational drug chapter is in here, and  
2 forensic pharmacist chapter is in here, and  
3 then there's two chapters on drug testing, one  
4 is forensic drug testing and the other is  
5 workplace drug testing.  
6 So there's an extensive  
7 description of urine drug tests and the  
8 analytical methods used for such testing.  
9 HEARING OFFICER WALKER: Excuse me,  
10 Mr. Herbert, what's the name of the --  
11 MR. HERBERT: The name of it is Drug  
12 Injury, Liability, Analysis and Prevention,  
13 third edition.  
14 BY MR. HERBERT:  
15 Q. Doctor, if I can refer you to the case  
16 at issue here.  
17 What did you review prior to  
18 giving any opinions in the case of my client  
19 Duane Bennett?  
20 A. I reviewed the Chicago Police  
21 Department internal affairs transcript report  
22 test results showing a positive screening and  
23 confirmation for marijuana metabolite. I  
24 reviewed Dr. Conver's report, OMS Group,

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1 Occupational Medical Specialists.  
2 I reviewed the hair test result.  
3 And also a urine test result from a -- I'm  
4 blocking the name of the clinic. A clinic on  
5 the far southwest side.  
6 Q. And those are the two tests -- when  
7 you talk about that subsequent urine test and  
8 that hair test, those were the tests that  
9 were -- that were done at the request of my  
10 client, correct?  
11 A. Yes, yes. And I reviewed some -- a  
12 few articles from my personal library. And not  
13 reviewed, but I interviewed Sergeant Bennett  
14 also after --  
15 Q. Why did you examine Sergeant Bennett?  
16 A. Well, it's important to get his side  
17 of the story as part of forensic analysis to  
18 determine the timing, the tempo relationship of  
19 his claim of being exposed to environmental  
20 marijuana, his affirmation of denial of  
21 marijuana use, and just, you know, add more  
22 context to the information that was provided by  
23 the police report.  
24 Q. Okay. And if we were to assume that



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1 what Sergeant Bennett stated how he was exposed  
2 to marijuana, is it possible that the positive  
3 test result for the sample submitted to the  
4 police department was the result of  
5 environmental exposure as opposed to active or  
6 intentional ingestion?

7 A. In my opinion, yes, it is possible  
8 based on the accumulation of those  
9 environmental exposures.

10 Q. And the environmental exposures that  
11 he talked to you about and that were identified  
12 in the internal affairs reports talks about how  
13 his son was smoking marijuana in a close  
14 proximity to him, to Sergeant Bennett?

15 A. It was in his son's room. He knew he  
16 had smoking -- he was smoking marijuana. He  
17 described being in a concert where marijuana  
18 was being smoked. He described being called to  
19 a scene, a shop where he knew that marijuana  
20 was -- he could smell marijuana there.

21 Q. And that was a call -- that was a call  
22 on the police department, correct?

23 A. Yes, yes. And then described both in  
24 the IAD record as well as to me that his desk

1 A. Well, just to summarize, it's -- you  
2 would expect there to be marijuana ingestion,  
3 inhalation, and potential for detectability.  
4 It depends on the amount of the dose and the  
5 concentration of the urine.

6 Number two, the passive ingestion  
7 of marijuana through secondhand smoke has been  
8 reported, and I think that it's more likely  
9 that this positive test, this positive finding  
10 that resulted in us being here today, this  
11 case, was as a result of environmental  
12 exposures. It's not a single exposure. It's  
13 multiple, within a short period of time. And  
14 although -- and I recognize Dr. Conver's report  
15 that the -- it's not possible for this to  
16 happen at this amount of exposure that's  
17 described. It is possible. It has been  
18 reported. Levels at the level detected  
19 by -- in Sergeant Bennett's urine have been  
20 described. Because of the variance, as I  
21 described earlier, what I would describe as a  
22 physiological variance, and the limited number  
23 of subjects that are the bases for the  
24 conclusions that you have to have a certain

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1 was close to a narcotic vault or narcotic  
2 locker where one can smell the presence of  
3 marijuana.

4 So as I said, cumulatively, we  
5 have four exposures. Clearly, marijuana is in  
6 the air. Clearly, that marijuana gets in one's  
7 body. If you can smell it, you're inhaling it.  
8 So it's certainly possible.

9 Q. Okay. And can urine drug tests show  
10 positive results after passive or environmental  
11 exposure?

12 A. Oh, definitely. I mean -- the  
13 articles I referenced in my report describe  
14 the -- some of the research that's done on  
15 that. And, again, this is follow-up to a much  
16 larger body of science document and the risk of  
17 secondhand smoke from tobacco and cigarettes.

18 Q. And your opinions, are they based upon  
19 a reasonable degree of pharmacological  
20 certainty, as well as your background, training  
21 and experience?

22 A. Yes, sir, they are.

23 Q. And, finally, what are your opinions  
24 regarding this drug test?

1 number of cigarettes in a closed room, in my  
2 opinion, as I said, with the accumulation of  
3 these four exposure vectors, if you will, it's  
4 more likely than that is the cause than a -- an  
5 intentional smoking of a cigarette.

6 And also the fact that a  
7 subsequent test was negative is telling that  
8 the amount that was present, if, indeed,  
9 the -- I'm not disputing that marijuana was  
10 detected as reported in the IAD report. But  
11 the levels were very low.

12 So a few days later there was not  
13 enough there for there to be a positive test in  
14 that screening test.

15 And as I said earlier, if  
16 you -- you can have -- you wouldn't expect a  
17 positive hair test from a single exposure to  
18 marijuana smoking. It's certainly not from  
19 passive exposure unless you live in the  
20 environment. But that negative hair test is  
21 also -- to me is evidence that there's no  
22 chronic marijuana use here. I know that's not  
23 important for your purposes here.

24 But just so you hear a single



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1 sentence, as science supports, you can detect  
2 it. The level that was reported was very low.  
3 It certainly is possible. And the fact we have  
4 multiple exposure venues, and subsequent  
5 negative tests supports my opinion that it's  
6 most likely or more likely than not  
7 environmental exposure and not intentional  
8 smoking.

9 **THE VIDEOGRAPHER:** We're now off the  
10 record.

11 (Brief pause.)

12 **THE VIDEOGRAPHER:** Proceed.

13 **MR. HERBERT:** Thank you, Doctor. I have  
14 nothing further.

15 **HEARING OFFICER WALKER:**  
16 Cross-examination.

17 **CROSS-EXAMINATION**

18 **BY MR. POLK:**

19 Q. Good morning, Doctor. You spoke of  
20 reviewing the IAD interview and interview of  
21 Sergeant Bennett, correct?

22 A. Yes.

23 Q. He told you of the four exposures that  
24 he could account for that he was trying to use

1 not tell me that.

2 Q. Do you know the volume of the room  
3 itself and the air?

4 A. No, I don't.

5 Q. Do you know the ventilation in the  
6 room?

7 A. I don't.

8 Q. Do you know the concert venue that he  
9 went to?

10 A. Other than it being Milwaukee, no.

11 Q. Do you know if there was marijuana  
12 actively being smoked at the tire shop that he  
13 went to?

14 A. That's what he said. He smelled it.  
15 Whether it was being smoked when he was there,  
16 he didn't tell me that.

17 Q. And I would like to ask a couple of  
18 questions about the narcotics locker.

19 In your report you said  
20 essentially if -- please correct me if I'm  
21 mischaracterizing your report, that if you can  
22 smell marijuana, then it is volatilized and  
23 could be absorbed, correct?

24 A. Yes.

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1 to explain his positive result, correct?

2 A. Yes.

3 Q. And there was one in his son's room,  
4 one in a concert, one in a tire shop, and one  
5 at a narcotic locker, correct?

6 A. Yes.

7 Q. Did you -- did Sergeant Bennett tell  
8 you specific details about each of these  
9 circumstances?

10 A. Well, I have details of the locker  
11 being very close to his desk where he worked.  
12 He was working for three weeks before this  
13 incident. That's about the greatest detail.

14 I don't have any details of the  
15 concert. I think I recall him saying he was  
16 there for a couple of hours. I don't know the  
17 length of time. And he was very unhappy with  
18 his son.

19 Q. Do you know -- first incident was in  
20 his son's room, correct?

21 A. Yes.

22 Q. Do you know if he was actively in the  
23 room when marijuana was being smoked?

24 A. I did not get that impression. He did

1 Q. Now, was marijuana burning in the  
2 locker?

3 A. No, no.

4 Q. So it was just sitting there in close  
5 proximity to him?

6 A. Yes. You can inhale marijuana from  
7 plants, through volatilization, or even the  
8 particulates. It doesn't have to be burned.  
9 And that same -- when people eat marijuana or  
10 put marijuana in food, mayonnaise, if you can  
11 believe it, it's not pyrolyzed, it's not  
12 burned.

13 So it doesn't have to be burned  
14 in order to have the intoxicating effect, which  
15 is -- or medicinal effect, because there is  
16 some medicinal use of marijuana.

17 Q. You also described that you reviewed  
18 the literature on the subject.

19 A. I was very familiar with the  
20 literature. I pulled two articles from our  
21 library that I referenced, so I could have  
22 something to produce that's -- so it's not just  
23 my opinion.

24 Q. Which articles did you reference?



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1 A. One is Clinical Pharmacology in  
2 Therapeutics. And that is from 1986, Cohn and  
3 Johnson.  
4 Q. Is that the article called Contact  
5 Highs and Urinary Cannabinoid Excretion After  
6 Passive Exposure to Marijuana Smoke?  
7 A. Yes, sir.  
8 Q. Okay. And what else did you review?  
9 A. I'm looking for the title now, sir.  
10 And the second is by Cohn, Johnson, Darwin  
11 and -- I have to spell it,  
12 Y-O-U-S-E-F-N-E-J-A-D, in Journal of Analytical  
13 Toxicology, 1987, Passive Inhalation of  
14 Marijuana Smoke, Urinalysis and Room Air Levels  
15 of Delta 9 Tetrahydrocannabinol.  
16 Q. What were the conditions, the  
17 experimental conditions, in those studies?  
18 A. Closed rooms, limited ventilation.  
19 The dimensions of the rooms are described, and  
20 also the number of cigarettes that were smoked  
21 in the rooms are measured and reported. And  
22 some of the results in the studies include room  
23 air levels of marijuana. One of the studies  
24 was primarily measuring any subjective effects

1 there were general questions made in direct  
2 about the material that the doctor used, but in  
3 terms of consistency and being able to follow  
4 along. So let's mark that Superintendent's  
5 Exhibit No. 3.  
6 MR. POLK: I marked the first article as  
7 Superintendent Exhibit 3.  
8 (WHEREUPON, said  
9 document was marked as  
10 Superintendent Exhibit  
11 No. 3 for  
12 Identification.)  
13 BY MR. POLK:  
14 Q. So, going back to that study, wasn't  
15 the room 8.21 feet by 6.82 feet by 8.00 feet?  
16 A. Yes. It's listed on the  
17 bottom-right-hand column.  
18 Q. And weren't the two studies -- weren't  
19 the two experiments that they performed one  
20 involved four marijuana cigarettes being smoked  
21 for one hour a day for six consecutive days and  
22 the other was 16 marijuana cigarettes being  
23 smoked for one hour a day for six consecutive  
24 days in this 8.2 by 6.83 by 8.0 foot room?

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1 in the subjects who were volunteers in the  
2 study, blood levels of the active ingredient,  
3 and, of course, the urine levels were reported  
4 in both articles.  
5 Q. What were the dimensions of the room  
6 in each study? I believe it might be on page  
7 248 of the first article you mentioned. The  
8 second page over all of the article.  
9 A. Thank you.  
10 HEARING OFFICER WALKER: Excuse me for  
11 interrupting you. Did the witness use this  
12 document in your direct?  
13 MR. HERBERT: He did not.  
14 HEARING OFFICER WALKER: Okay.  
15 MR. HERBERT: So I would object being  
16 outside the scope.  
17 HEARING OFFICER WALKER: Not only that, I  
18 mean is the document -- just my concern is that  
19 the document needs to be marked, because  
20 there's testimony coming from that document.  
21 Was it revealed in discovery? Or if you're  
22 going to use it, then, Mr. Polk, perhaps you  
23 need to mark it. I don't know that it would  
24 necessarily be outside of the scope because

1 A. Yes, sir.  
2 Q. Wasn't the air quality in that room so  
3 poor that the participants wear goggles?  
4 A. You mean because there was so much  
5 smoke?  
6 Q. Yes.  
7 A. Yes, yes, and also to control for the  
8 smoke induced conjunctival irritation, the  
9 redness or the bloodshot eyes.  
10 If you were exposed to smoke, you  
11 couldn't make an assessment as to whether the  
12 smoking of marijuana, the physiological or  
13 central effect, internal effect, so that  
14 was -- that was the reason for the goggles.  
15 But secondary reason for the goggles is because  
16 of the eye irritation of the smoke.  
17 Q. Aren't these conditions much more  
18 extreme than any of the four scenarios than  
19 Sergeant Bennett described in his exposure to  
20 secondhand marijuana?  
21 A. Yes, sir, they are.  
22 Q. In this study there weren't any GCMS  
23 results of the marijuana metabolite  
24 concentration in the urine, were there?



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1 A. In the CP and T article, Exhibit 3  
2 that you just handed me?  
3 Q. Yes.  
4 A. Let me see. Well, there are reported  
5 levels and they would have tested them with  
6 GCMS for the active ingredient. I'm sorry, for  
7 the blood. So you're correct, there are no  
8 urine tests.  
9 Q. Looking at table two on page 252 for  
10 this article, isn't it true that the two  
11 thresholds they used for their enzyme analysis  
12 to say 20 nanograms per milliliter and then 100  
13 nanograms per milliliter, and they inferred a  
14 level for 75 nanograms per milliliter?  
15 A. Yes, sir.  
16 Q. Isn't it true that the City of Chicago  
17 drug testing program tests at 15 nanograms per  
18 milliliter for their screening tests?  
19 A. Yes, sir.  
20 Q. So a positive for 20 nanograms per  
21 milliliter does not necessarily mean that they  
22 would have had positive for 50 nanograms per  
23 milliliter, correct?  
24 A. Correct.

1 of questioning for unrelated tests.  
2 HEARING OFFICER WALKER: I'm sorry?  
3 MR. HERBERT: I object to the relevance of  
4 this unrelated test to the case at issue. It  
5 really doesn't bear any relevance on this case.  
6 HEARING OFFICER WALKER: What is the  
7 relevance, Mr. Polk?  
8 MR. POLK: He said that he reviewed the  
9 literature as evidence of the fact that  
10 secondhand smoke could cause positive urine  
11 tests for marijuana metabolites and this is  
12 what he based his opinion on. I think it is  
13 highly relevant.  
14 MR. HERBERT: To be fair, this was one of  
15 the things that he relied upon to come up with  
16 his opinion, not solely this document.  
17 HEARING OFFICER WALKER: Right. You will  
18 have an opportunity to do that in redirect. So  
19 objection is overruled. He did say he used --  
20 this is one of the things.  
21 Do you want to repeat the  
22 question or --  
23 BY MR. POLK:  
24 Q. Isn't that correct?

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1 Q. And looking at the left half of table  
2 two on page 252, it looks -- isn't it correct  
3 that in the room with four marijuana cigarettes  
4 in their 8.2 by 6.8 by 8 foot room, none of the  
5 subjects had even 75 nanograms per milliliter  
6 in the emit test?  
7 A. None of them exceeded that threshold,  
8 yes.  
9 Q. Isn't that -- the emit test, isn't  
10 that the same as enzyme immunoassay?  
11 A. Yes.  
12 Q. And doesn't that test for all  
13 marijuana metabolites?  
14 A. Yes.  
15 Q. So this is different from the GCMS  
16 test, correct?  
17 A. Yes, it is.  
18 Q. It tests for -- GCMS tests for a  
19 subset of what the emit tests for, correct?  
20 A. Yes.  
21 Q. So they had less than 75 nanograms per  
22 milliliter for all marijuana metabolites in the  
23 room with four marijuana cigarettes, correct?  
24 MR. HERBERT: I would object to the line

1 A. Give me the question again.  
2 Q. So looking at the left hand of table  
3 two, when there are four marijuana cigarettes  
4 in the 8.2 by 6.8 by 8 foot room with no  
5 ventilation, isn't it true that none of the  
6 test subjects had 75 nanograms per milliliter  
7 of total marijuana metabolites in their urine?  
8 A. It's true; however, as a scientist  
9 looking at this, we have five subjects. This  
10 is not created science. The only thing you can  
11 say about this is there were no positives or  
12 none exceeded the 20 nanogram threshold. It's  
13 too small a sample to draw any conclusions from  
14 it.  
15 Q. Isn't this one of the bases for your  
16 opinion?  
17 A. This is an article I referenced. The  
18 article references a wide variance of levels  
19 from the exposures that limited number of  
20 subjects participated in. Because I -- because  
21 I referred to this article doesn't mean that  
22 the left-hand table of -- for measuring with a  
23 20 nanogram threshold says that because of the  
24 findings are negative, doesn't mean this isn't



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1 going to happen. This is five samples.  
2 Marijuana is used by millions of people.  
3 Marijuana is inhaled from the environment. It  
4 will circulate. It will get into the urine,  
5 and in some tests it will be positive.

6 Q. Isn't this the only article that you  
7 specifically referenced in your opinion?

8 A. It's the only article I brought with  
9 me. I didn't feel the need to bring other  
10 articles.

11 Q. So isn't it fair this --

12 A. Sorry. I brought two articles with  
13 me.

14 Q. Did you -- didn't you only reference  
15 this article in your written opinion that you  
16 wrote on March 11th of 2013?

17 A. Yes.

18 **HEARING OFFICER WALKER:** So hold on a  
19 moment. We need to -- do you have an actual  
20 copy of that report? And has it been marked?

21 **MR. POLK:** It was on Respondent's list of  
22 exhibits, so I didn't bring spare copies. I  
23 just have my own copy.

24 **HEARING OFFICER WALKER:** Okay. But I

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1 Q. So you referenced it under observation  
2 and opinion number one, on the second page of  
3 your opinion you said, this has been reported  
4 in the literature for the last several decades,  
5 reprints of 1986 article on the topic Journal  
6 of Clinical Pharmacology is appended to this  
7 report, correct?

8 A. Yes.

9 Q. You didn't reference any other reports  
10 or articles, did you?

11 A. I did not.

12 Q. In the other -- the second study that  
13 you said you brought with you, it was also by  
14 Cohn?

15 A. Yes, sir.

16 Q. Are there GCMS -- I don't have a copy  
17 of that one, because it wasn't referenced, and  
18 I couldn't find it online. Are there GCMS  
19 results in that study?

20 A. Yes.

21 Q. What are the GCMS results in that  
22 study?

23 **HEARING OFFICER WALKER:** Do you have a  
24 copy?

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1 don't believe you used this. I happen to have  
2 a copy in the file. But I did not -- I don't  
3 believe it was used by Mr. Herbert in his --  
4 just the book I have a reference to here.

5 **MR. HERBERT:** Right. I didn't cite to it.

6 **HEARING OFFICER WALKER:** He hasn't used  
7 it. Let's mark it Superintendent's No. 4.

8 (WHEREUPON, said  
9 document was marked as  
10 Superintendent Exhibit  
11 No. 4 for  
12 Identification.)

13 **THE WITNESS:** Excuse me. I may have  
14 misspoken. I don't see it referenced in my  
15 report.

16 **BY MR. POLK:**

17 Q. Is this the same copy you have?

18 A. Yes.

19 **MR. HERBERT:** Where is it referenced I  
20 guess is the question?

21 **THE WITNESS:** 1986 article on top, Journal  
22 of Clinical Pharmacology, number one. Yes, it  
23 is.

24 **BY MR. POLK:**

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1 **MR. POLK:** I don't have a copy of this.  
2 It wasn't in the report. And I couldn't find  
3 any other that were available online.

4 **HEARING OFFICER WALKER:** Where was it  
5 referenced? Where did you get this?

6 **MR. POLK:** He said he brought that with  
7 him and that was the other article.

8 **HEARING OFFICER WALKER:** The witness just  
9 said he brought it with him?

10 **MR. POLK:** Yes.

11 **HEARING OFFICER WALKER:** And you're  
12 questioning --

13 **MR. POLK:** I'm questioning were there GCMS  
14 results in that second article.

15 **HEARING OFFICER WALKER:** Okay. Is that  
16 article mentioned in his report?

17 **MR. POLK:** He said in his report that  
18 he --

19 **THE WITNESS:** It's not mentioned in my  
20 report.

21 **MR. POLK:** Then I'll withdraw the  
22 question.

23 **BY MR. POLK:**

24 Q. So then nothing that you mention in



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1 your report has any GCMS results for  
2 specifically THC acid in urine test from  
3 secondhand smoke?

4 **MR. HERBERT:** Objection. Form of the  
5 question.

6 **BY MR. POLK:**

7 Q. Isn't that correct?

8 **HEARING OFFICER WALKER:** Okay.

9 **MR. HERBERT:** Vague.

10 **HEARING OFFICER WALKER:** Sustained. Why  
11 don't you rephrase that, please.

12 **BY MR. POLK:**

13 Q. Isn't it true that you also referenced  
14 the report that we just talked about, the first  
15 one, correct?

16 A. Yes.

17 Q. And isn't it true that we just went  
18 over the results that were from an emit test  
19 and there are no GCMS test results from urine  
20 tests in that article, correct?

21 A. No, there are GCMS -- references GCMS  
22 at page 252 in the bottom of the right-hand  
23 column.

24 Any time there is an exact

1 number, 4.6, 23, these are all the results of  
2 GCMS tests.

3 Q. Isn't it true that table two only  
4 tells of the number of positive tests and not  
5 any measurement of nanograms per milliliter of  
6 marijuana metabolite in the urine?

7 A. You are wrong, sir.

8 Q. So you're saying, for instance,  
9 subject A, 20 nanograms per milliliter it says  
10 three, and that means that there's three  
11 nanograms per milliliter in subject A's urine?

12 A. Yes.

13 Q. So that's not 20 nanograms per  
14 milliliter, is it, that's three -- three is  
15 less than 20, correct?

16 Doesn't it say, table one, urine  
17 samples tested positive for cannabinoid  
18 metabolites by emit assay after passive  
19 exposure to marijuana smoke?

20 A. I was wrong. I was wrong. I  
21 apologize for saying you were wrong. The  
22 subject A had -- was tested three times and had  
23 three test results that exceeded that. The  
24 total number of results was 23. But the -- all

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1 number, it has to be GCMS. Whether or not  
2 something exceeded a threshold or not is based  
3 on emit alone. If there is a specific number,  
4 that sample would always be taken to GCMS for  
5 quantification and identification.

6 Q. Could you please point to me in this  
7 article where there are GCMS results from a  
8 urine test, any specific numbers?

9 A. Well, the urine -- at page 252, the  
10 bottom of the right-hand column, it says urine  
11 samples were tested for cannabinoids by emit  
12 20, table two, had an overall confirmation of  
13 the metabolite Delta 9 THC carboxylic acid by  
14 GCMS of 84.9 percent. That means that all  
15 these -- anything that showed a positive was  
16 taken to GCMS and reported, and there was an 85  
17 percent correlation between exceeding the  
18 threshold and having a positive.

19 Emit tests do not provide a  
20 number. They just show positive or negative.

21 Q. And my question is, where is the data  
22 for the GCMS?

23 A. It's presented in table two. Any time  
24 you see number, a whole number, or -- yeah, a

1 of the emit tests that were positive were  
2 tested with using GCMS, according to the  
3 sentence that I read at the bottom of page 252  
4 in the right-hand column.

5 Q. So again my question is, isn't it true  
6 that there's no GCMS data in this article?

7 A. That's true.

8 Q. So you don't know based on this  
9 article the only one you reference in your  
10 report the specific level of THCA metabolite in  
11 the urine of these test subjects, correct?

12 A. No, it's not reported.

13 Q. So isn't it true that the two tests  
14 that the City of Chicago Police Department  
15 performed, neither of those two tests at the  
16 concentration levels that they performed them  
17 at were performed in this study?

18 A. Well, as I understand, the first test  
19 was an emit test, and it was reported as  
20 positive which means that there was a detection  
21 of greater than 50 nanograms. And the second  
22 test -- so that would be the same as what's  
23 done in this study.

24 Q. Is it true --



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1 A. At a different level.

2 Q. Exactly. Isn't it true they did a  
3 20 -- emit 20 assay and emit 100 assay in this  
4 study?

5 A. Yes.

6 Q. And they did not do an emit 50 assay,  
7 which is what the City of Chicago uses and what  
8 the federal guidelines are?

9 A. Yes.

10 MR. POLK: No further questions.

11 HEARING OFFICER WALKER: Redirect.

12 REDIRECT EXAMINATION

13 BY MR. HERBERT:

14 Q. Just briefly.

15 Doctor, you cited this article.  
16 My question to you is, do you believe that this  
17 article supports your opinion that the results  
18 for Sergeant Bennett's drug test were  
19 environmental versus intentional inhalation?

20 A. Yes, I do.

21 Q. Why?

22 A. Well, it's -- documentation from the  
23 literature that -- it's well established that  
24 secondhand smoke from marijuana is absorbed.

1 per milliliter of THCA in his urine?

2 A. Not this article.

3 MR. POLK: Nothing further.

4 MR. HERBERT: Nothing else.

5 HEARING OFFICER WALKER: Thank you,  
6 Doctor. You may be excused. Don't forget your  
7 microphone.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 (Witness was duly

11 sworn.)

12 THOMAS McMAHON,

13 called as a witness herein, after having been  
14 first duly sworn, was examined and testified as  
15 follows:

16 DIRECT EXAMINATION

17 BY MR. HERBERT:

18 Q. Good afternoon, sir, how are you?

19 A. Good. How are you, sir?

20 Q. Good. Please introduce yourself and  
21 spell your last name.

22 A. Thomas McMahon. M-C-M-A-H-O-N. I'm a  
23 retired captain, Chicago Police Department, 37  
24 years of service.

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1 This goes further to document exactly how much  
2 and what percentage of positives, the precise  
3 amount in test subjects, a very limited number  
4 of test subjects, but the basic premise of my  
5 opinions and my reliance and reference to this  
6 article was that I didn't inhale. I was in the  
7 room. It can cause positive test, indeed  
8 the -- what was really another focus of this is  
9 can someone get high from being in a room with  
10 smoke. They essentially said there's not much  
11 evidence to support that. Subjectively there  
12 may be a placebo effect.

13 Q. Is there anything in this article that  
14 would contradict your opinion that the result  
15 was more likely environmental for Sergeant  
16 Bennett than intentional?

17 A. No, sir, I don't think so.

18 MR. HERBERT: Nothing else. Further  
19 cross.

20 RECROSS-EXAMINATION

21 BY MR. POLK:

22 Q. Is there anything in this article that  
23 supports that the exposures that Sergeant  
24 Bennett described could result in 33 nanograms

1 Q. Okay. And, Captain, when did you  
2 retire from the police department?

3 A. 2010.

4 Q. What have you been doing since your  
5 retirement, work wise?

6 A. Work wise, I am on staff with Calumet  
7 College of St. Joe's in Whiting, Indiana. We  
8 have a -- for college credit we -- it's a  
9 college and I'm teaching Chicago police  
10 officers who are getting their degrees,  
11 undergraduate degree, in criminal justice. I'm  
12 also on the staff at Chicago State University  
13 with their criminal justice department.

14 Q. Okay. And as a police officer with  
15 the City of Chicago, fair to say that you were  
16 promoted to the rank from patrolman to sergeant  
17 to lieutenant to captain?

18 A. Yes, sir.

19 Q. Okay. And did you work in various  
20 districts throughout the City?

21 A. Yes. My career expanded not only  
22 district law enforcement but gang crimes  
23 detective division. As a lieutenant I was on  
24 Superintendent Hillard's staff. As lieutenant



1 in charge of crime in the Austin unit. When I  
2 was promoted to captain, I was assigned to the  
3 fifth police district, Calumet district, the  
4 south side, southeast side of Chicago.

5 Q. What's your educational background?

6 A. I have an undergraduate in master's  
7 degree in criminal justice from the Chicago  
8 State University.

9 Q. And, Captain, you know my client,  
10 correct?

11 A. Yes, sir, I do.

12 Q. And how is it that you know Duane  
13 Bennett?

14 A. I know Duane Bennett when Duane came  
15 to the fifth district as a supervisor. He came  
16 there as a sergeant. He elected to come there.  
17 He used the transfer bid process to come there.  
18 And I was on midnights. And that's when I  
19 first met him. And --

20 Q. Do you remember approximately what  
21 year that was?

22 A. I would estimate somewhere around  
23 2008.

24 Q. And have you kept up communication

1 reputation he had on the police department?

2 A. Amongst the coworkers, those police  
3 officers that worked for him, he had an  
4 outstanding reputation. Kind of a guidance  
5 counselor. He was one of those individuals who  
6 would sit down and talk to officers and guide  
7 them. Great motivator. He was able to  
8 motivate these younger officers. And actually  
9 get them to excel.

10 Q. And as far as getting to know him  
11 better as a person, have you been able to  
12 determine what type of character he has as a  
13 man?

14 A. After I retired in 2010, I kept up my  
15 acquaintance, and now I would consider a strong  
16 friendship with Duane Bennett over these years.  
17 I find him to be an exceptional person.

18 MR. HERBERT: I have nothing further.  
19 Thanks.

20 THE WITNESS: Thank you.

21 HEARING OFFICER WALKER:

22 Cross-examination.

23 MR. POLK: No cross-examination.

24 HEARING OFFICER WALKER: Thank you, sir.

1 with Duane during that time period?

2 A. Yes. Subsequent to that I was moved  
3 from the midnight watch to the day watch. And  
4 Duane Bennett, Sergeant Bennett, actually came  
5 on the day watch. So he was part of my  
6 supervisory staff.

7 Q. Okay. And did you have the  
8 opportunity to observe Duane Bennett work as a  
9 sergeant?

10 A. On a regular basis.

11 Q. How would you characterize his work  
12 when he worked for you?

13 A. Excellent worker. Good decisionmaker.  
14 Excellent at critical thinking. Had a great  
15 understanding of the general orders and job  
16 knowledge. And he had experience. His  
17 experience from being a tactical officer in the  
18 21st District helped guide a lot of the younger  
19 police officers we had. So he was an excellent  
20 field supervisor. Exceptionally ethical and  
21 moralistic.

22 Q. How about did you have the opportunity  
23 to speak to any of his coworkers or people that  
24 worked for him to determine what type of

1 You may be excused.

2 THE WITNESS: Thank you, ma'am.

3 (Witness excused.)

4 (Witness was duly  
5 sworn.)

6 RICHARD BEDNAREK,  
7 called as a witness herein, after having been  
8 first duly sworn, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. HERBERT:

12 Q. Good afternoon, sir. How are you?

13 A. I'm fine.

14 Q. Good. Please introduce yourself and  
15 spell your last name for the court reporter.

16 A. My name is Richard Bednarek. B, as in  
17 boy, E-D-N-A-R-E-K.

18 Q. And, sir, by whom are you employed?

19 A. I'm employed by the City of Chicago.  
20 Chicago Police Department.

21 Q. How long have you been a police  
22 officer?

23 A. Since 1986.

24 Q. And what rank do you currently hold?



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1 A. I currently hold the rank of sergeant  
2 of police.  
3 Q. And approximately what year did you  
4 become promoted to sergeant?  
5 A. I was promoted to sergeant in 1997.  
6 Q. And you know my client Duane Bennett?  
7 A. Yes, I do.  
8 Q. And how is it that you know him?  
9 A. I first met Duane when he came to the  
10 21st District for his training as a police  
11 officer. I was an FTO at the time. I was not  
12 his training officer.  
13 But, you know, I trained one of  
14 the recruits, Jim Mureski, that came on the job  
15 with him. I don't know if they were exact  
16 classmates or not, but he was my recruit.  
17 That's how I met Duane for the first time.  
18 Q. That would have been Duane's first job  
19 out of the academy?  
20 A. Correct.  
21 Q. Approximately 22 years ago?  
22 A. Yes.  
23 Q. And did you work with Duane during  
24 that time period?

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1 A. Not that I worked directly with him.  
2 We were never assigned as partners, but  
3 obviously being in the same district, the 21st  
4 district. There were different jobs and  
5 different assigns that we would cross paths on  
6 numerous times.  
7 Q. And did you and Duane stop working in  
8 the same district at some point?  
9 A. I got a new assignment to the gangs  
10 west unit, but it wasn't until 1998 after I was  
11 assigned to the sixth district Duane was  
12 promoted to sergeant and he was assigned to  
13 sixth, and that's when I worked with him  
14 extensively. We were assigned to the same  
15 watch.  
16 Q. If you can describe that. How long  
17 you worked with Duane as a sergeant together in  
18 the sixth district?  
19 A. I believe it was approximately about  
20 two years, two and a half years. And we were  
21 assigned to the third watch. And we basically  
22 were doing roll calls together. We were on the  
23 street together. Obviously we backed each  
24 other up for different assignments, and again

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1 due to crossing. I would be either 20, or he  
2 would be 30, ten, obviously switching around  
3 all the time, but we would cross paths and work  
4 together, and then everything from simple  
5 disturbances to homicides, to robberies and all  
6 sorts of different assignments that were  
7 prevalent and still are in the sixth district  
8 today.  
9 Q. And did you keep up a friendship with  
10 Duane Bennett since that time you worked with  
11 him in the sixth district?  
12 A. Yes. We would  
13 occasionally -- obviously talk via cell phone  
14 mostly, but occasionally we'd get together for  
15 lunch or something. Nothing major. I was  
16 never at his birth of any of his children. But  
17 we did keep in touch.  
18 Q. Okay. And how would you characterize  
19 Duane Bennett's work as a police officer and a  
20 sergeant?  
21 A. Duane Bennett was a very model police  
22 officer and sergeant. He was very  
23 knowledgeable, very intelligent, and very good  
24 family man. Everything -- everything that I

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1 strived to be and continue to be to this day.  
2 Q. Okay. And how about have you spoken  
3 to any of Duane's coworkers or people that work  
4 for him, and have you been able to ascertain  
5 what his reputation is like on the police  
6 department?  
7 A. Everyone I spoke to who has worked  
8 under Duane or with Duane basically said the  
9 same opinion, there is -- I mean nobody that I  
10 bumped into had anything majorly bad to say.  
11 Some people might have been a little upset that  
12 he went to their jobs and ensured that they did  
13 it right, which wasn't always the easiest way.  
14 But again, it always followed the department  
15 procedure and law and had to be done.  
16 Q. And how about as far as your knowledge  
17 of Duane Bennett socially, have you ever known  
18 him to be an individual that would smoke  
19 marijuana?  
20 A. No.  
21 Q. Or use it in any other fashion?  
22 A. No, I've never seen him or never  
23 even -- after he would come to work --  
24 obviously, we all had family functions and



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1 parties and we'd come to work the next day or  
2 later after the event, and there was never any  
3 sign of any impairment that I ever observed at  
4 all.

5 **MR. HERBERT:** Nothing further.

6 **HEARING OFFICER WALKER:** Cross.

7 **MR. POLK:** No cross-examination.

8 **HEARING OFFICER WALKER:** Thank you. You  
9 may be excused.

10 **THE WITNESS:** Thank you.

11 (Witness excused.)

12 (Witness was duly  
13 sworn.)

14 **PATRICIA CIARA,**  
15 called as a witness herein, after having been  
16 first duly sworn, was examined and testified as  
17 follows:

18 **DIRECT EXAMINATION**

19 **BY MR. HERBERT:**

20 Q. Good afternoon, sir. How are you?

21 A. Good.

22 Q. Please introduce yourself and spell  
23 your last name for the court reporter.

24 A. My name is Daniel Lockard.

1 Bennett?

2 A. On several occasions, yes.

3 Q. With his family as well?

4 A. I did, yes.

5 Q. And how about the neighborhood, have  
6 you spoken to people that live in the same  
7 neighborhood as you as to what type of  
8 reputation Duane has in the neighborhood?

9 A. I have, yes.

10 Q. How would you characterize his  
11 reputation?

12 A. He has the highest reputation you can  
13 have. Everybody thinks highly of him. He is a  
14 good neighbor, a good friend. Basically him  
15 and his wife babysat my oldest guys for a year  
16 when both my wife and I were working. Felt  
17 very comfortable leaving my kids with him.  
18 They're grown up with his kids together.

19 Q. Have you ever known or have you ever  
20 heard anything from talking to the neighbors  
21 about Duane Bennett liking to smoke marijuana  
22 or ingest marijuana in any way?

23 A. Absolutely not, never have.

24 Q. As far as Duane Bennett as a police

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1 **L-O-C-K-A-R-D.**

2 Q. And, Mr. Lockard, by whom are you  
3 employed?

4 A. Chicago Police Department.

5 Q. How long have you been a Chicago  
6 police officer?

7 A. Since 1989.

8 Q. And what rank do you currently hold?

9 A. Sergeant.

10 Q. And do you know my client Duane  
11 Bennett?

12 A. I do.

13 Q. How is it you know Sergeant Bennett?

14 A. Duane and I lived across the street  
15 from each other for several years. And we  
16 worked the squad car together as patrolmen in  
17 21 back in the early '90s. And I still live in  
18 the neighborhood. I'm around the corner now.

19 Q. Around the corner from Duane Bennett?

20 A. One block away.

21 Q. And would you consider yourself a  
22 friend of Duane Bennett's?

23 A. Absolutely.

24 Q. And have you socialized with Duane

1 officer, you obviously worked with him, you had  
2 the ability to observe him work.

3 How would you characterize his  
4 work as an officer?

5 A. He is a very hard worker. He's had a  
6 lot of tougher assignments than I have  
7 throughout my career, so I kind of -- not  
8 envied him, but had more respect for him, and  
9 the jobs he's been doing throughout the year on  
10 the department.

11 Q. How about the people that worked for  
12 him and worked with him, what type of  
13 reputation did he have with those individuals?

14 A. He had a great reputation. Everybody  
15 wanted -- everybody liked being with him when  
16 he was on the tact teams back in the day. They  
17 were very close. All backed each other up. It  
18 was a very close-knit group of guys.

19 The watch was the same way, when  
20 we had watches, when we went around the clock,  
21 they were very close. And just the highest  
22 feelings for him.

23 Q. And, finally, what type of character  
24 as a man do you think Duane Bennett has?



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1 A. He has the highest character. He'll  
2 help you out if you need anything. He is there  
3 for you. I'd leave my children with him. We  
4 went to Europe one time and the guys stayed  
5 with Jean and Duane for a week.

6 MR. HERBERT: I have nothing further.  
7 City may.

8 HEARING OFFICER WALKER:

9 Cross-examination.

10 MR. POLK: No cross.

11 HEARING OFFICER WALKER: Thank you, sir.  
12 You may be excused.

13 THE WITNESS: You're welcome.

14 (Witness Excused.)

15 (Witness was duly

16 sworn.)

17 PATRICIA CIARA,  
18 called as a witness herein, after having been  
19 first duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. HERBERT:

23 Q. Good afternoon. How are you?

24 A. Good afternoon. I'm fine. Thank you.

1 Q. Different levels?

2 A. Approximately five times.

3 Q. Okay. And you know my client Duane  
4 Bennett, correct?

5 A. Yes, I do.

6 Q. How do you know Duane Bennett?

7 A. I've known Officer Bennett since 1992,  
8 both socially and professionally.

9 Q. And professionally, how is it that you  
10 came to know about Duane Bennett?

11 A. During the course of my tenure, part  
12 of my duties was a front-line supervisor. So  
13 as relief field officer, I would rotate  
14 throughout the entire City. And I would go on  
15 calls and occasionally Sergeant Bennett was on  
16 these calls. We would work together. He and  
17 his teams would help us in any way with  
18 injured, ill individuals, traffic control if we  
19 needed it. I ran the entire medical facility  
20 for the Taste of Chicago for five years. And  
21 Officer Bennett had a detail there with several  
22 officers. And so we worked closely together on  
23 these -- this detail. And several others.  
24 Parades, and other events that the City of

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1 Q. You're welcome. Would you please  
2 introduce yourself and spell your last name.

3 A. My name is Patricia, middle initial A.  
4 Last name is spelled C-I-A-R-A, pronounced  
5 Ciara.

6 Q. And I see that you're wearing the  
7 Chicago Fire Department uniform. Is that who  
8 you are employed by, currently?

9 A. That is correct. I'm on disability  
10 with the Chicago Fire Department, but I'm still  
11 considered an active member.

12 Q. Okay. What rank do you hold?

13 A. My rank is district chief, and my  
14 title when I left the department on disability  
15 it was director of personnel.

16 Q. Okay. And how long have you been  
17 employed by the City of Chicago as a  
18 firefighter?

19 A. Since 1980. I'm a paramedic, not a  
20 firefighter.

21 Q. Thank you for the clarification. And  
22 you've been promoted throughout your career as  
23 paramedic?

24 A. That's correct.

1 Chicago would put on.

2 Q. How would you characterize the work  
3 that you saw him perform?

4 A. Very professional. Do whatever is  
5 necessary in order to help the fire department,  
6 whether it's firemen or paramedics, with  
7 traffic control, with anything that we ask them  
8 to do. Close off a street because we needed to  
9 get ambulances, perhaps in and out of an  
10 accident scene or some sort of contained fire  
11 issue, things of that nature.

12 Q. How is his reputation amongst your  
13 coworkers and his coworkers?

14 A. I honestly can't say for my coworkers.  
15 But as far as me personally, he's one of the  
16 best. We -- paramedics work very, very closely  
17 with police officers throughout the entire  
18 City. And when we hear an officer in distress,  
19 we do whatever we have to do in order to get  
20 there, because we want to help them. They, in  
21 turn, including Officer Bennett, if we call for  
22 a ten-one, which is officer needs assistance,  
23 he -- and all of the police officers, come our  
24 aid as quickly as they possibly can.



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1 Q. You said that you've gotten to know  
2 Sergeant Bennett on a personal level?

3 A. Correct.

4 Q. And when did that personal friendship  
5 start and how would you characterize it?

6 A. 1992, I was best friends with his  
7 sister. We have shared Thanksgiving, Christmas  
8 meals together, graduation parties. I have  
9 been to his home with his family there and been  
10 invited. He has been invited to my home. And  
11 so we have -- we have socialized since 1992.

12 Q. Have you ever known Duane Bennett to  
13 be somebody that uses marijuana?

14 A. Never.

15 Q. What type of character does Duane  
16 Bennett have as a person?

17 A. As far as I'm concerned, the best.  
18 Aces.

19 MR. HERBERT: Thank you. Nothing further.

20 HEARING OFFICER WALKER: Cross?

21 MR. POLK: No cross.

22 HEARING OFFICER WALKER: Thank you. You  
23 may be excused.

24 (Witness Excused.)

1 A. Yes.

2 Q. And were you patrolman prior to that?

3 A. Yes.

4 Q. And where do you currently work?

5 A. Sixth district.

6 Q. And is that the only place that you've  
7 worked as a lieutenant?

8 A. No, I worked the third district as  
9 lieutenant as well.

10 Q. And as a sergeant, where did you work?

11 A. Worked in the detective division, plus  
12 I worked in the fifth district.

13 Q. And as patrolman, where did you work?

14 A. As patrolman then I got promoted to  
15 agent in the Internal Affairs Division.

16 Q. And what type of work did you perform  
17 while in internal affairs?

18 A. Everything. I worked in the  
19 confidential section.

20 Q. How long did you work there?

21 A. 11 years.

22 Q. Okay. And you know my client Duane  
23 Bennett, correct?

24 A. Yes, I do.

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1 (Witness was duly  
2 sworn.)

3 RONALD FORGUE,  
4 called as a witness herein, after having been  
5 first duly sworn, was examined and testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MR. HERBERT:

9 Q. Good afternoon, Lieutenant. How are  
10 you?

11 A. Good, sir.

12 Q. Please introduce yourself, spell your  
13 last name for the court reporter.

14 A. Lieutenant Ronald Forgue, F-O-R-G-U-E.

15 Q. And you're a lieutenant for the  
16 Chicago Police Department, correct?

17 A. Yes, sir.

18 Q. How long have you been employed by the  
19 Chicago Police Department?

20 A. 27 years.

21 Q. How long have you held the rank of  
22 lieutenant?

23 A. Since September.

24 Q. And prior to that, you were sergeant?

1 Q. How is it you know Duane Bennett?

2 A. I know Duane from the fifth district  
3 and also from the neighborhood, his son played  
4 basketball with my son.

5 Q. And as far as -- when did you first  
6 meet approximately Duane Bennett on the police  
7 department?

8 A. When I was in the fifth district.

9 Q. And approximately what year was that?

10 A. Maybe ten years ago.

11 Q. And did you work with Duane Bennett?

12 A. Yes, I did.

13 Q. And how would you characterize the  
14 work that Duane Bennett performed as a police  
15 officer?

16 A. Duane is a guy you want beside you.  
17 He responded to -- every call you were on he  
18 was right there next to you.

19 Q. Did you have the ability to determine  
20 whether or not he was honest or had integrity  
21 as a police officer?

22 A. Absolutely he had integrity.

23 Q. And what about his representation  
24 amongst his coworkers, were you ever able to



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1 speak with any of those individuals and  
2 determine what his representation was like?  
3 **A. They loved Duane. He was fair, you**  
4 **know. By the rules. But fair. He made sure**  
5 **cars were available. And the other thing was**  
6 **number one thing was officer safety.**

7 Q. As far as your knowing Duane socially,  
8 you said that you know him because Duane  
9 coached your son in basketball?

10 **A. Yes.**

11 Q. And would you characterize your  
12 relationship with him as a friendship?

13 **A. Yes.**

14 Q. Okay. And you said that you're from  
15 the same neighborhood or you currently reside  
16 in the same neighborhood?

17 **A. Correct.**

18 Q. Have you been out socially with Duane  
19 Bennett?

20 **A. Once or twice.**

21 Q. And have you spoken to any of the  
22 neighbors that know Duane Bennett?

23 **A. Yes.**

24 Q. And what type of reputation does he

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1 (Witness Excused.)

2 (Witness was duly  
3 sworn.)

4 OFFICER BAADER,  
5 called as a witness herein, after having been  
6 first duly sworn, was examined and testified as  
7 follows:

8 **DIRECT EXAMINATION**

9 **BY MR. HERBERT:**

10 Q. Good afternoon, Officer. How are you?

11 **A. Good afternoon, I am well.**

12 Q. Please introduce yourself and spell  
13 your last name.

14 **A. I'm Officer Baader, B-A-A-D-E-R.**  
15 **Chicago Police Department.**

16 Q. And where do you work right now?

17 **A. I work in the fifth district.**

18 Q. And that's as a patrol officer?

19 **A. Yes.**

20 Q. How long have you been a Chicago  
21 police officer?

22 **A. Ten years.**

23 Q. How do you know my client Duane  
24 Bennett?

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1 have in the neighborhood?

2 **A. Standup guy. A parent that's**  
3 **involved. One that you could trust your kid**  
4 **with. That one you wouldn't think twice about,**  
5 **okay, that's fine.**

6 Q. And that coaching position that he  
7 held with your son, that was a volunteer  
8 position?

9 **A. Yes.**

10 Q. And finally, did you ever know Duane  
11 Bennett to be a marijuana smoker or ingesting  
12 it in any other way?

13 **A. Absolutely not.**

14 Q. Did anyone in the neighborhood ever  
15 tell you that he had a representation of  
16 smoking marijuana or anything along those  
17 lines?

18 **A. Absolutely not.**

19 Q. Nothing further.

20 **HEARING OFFICER WALKER:**

21 Cross-examination.

22 **MR. POLK:** No cross.

23 **HEARING OFFICER WALKER:** Thank you, sir.

24 You may be excused.

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1 **A. I've worked for him for the past four**  
2 **years approximately.**

3 Q. And when you say you worked for him,  
4 he was your sergeant?

5 **A. Yes.**

6 Q. And was a tact team or on the watch?

7 **A. On the watch.**

8 Q. Okay. And how would you characterize  
9 Sergeant Bennett as a supervisor?

10 **A. He is one of the finest supervisors on**  
11 **the street.**

12 Q. Why do you say that?

13 What about Duane Bennett makes  
14 him being one of the finest sergeants on the  
15 street?

16 **A. When you hear him responding to the**  
17 **job, you know it's going to be all right. That**  
18 **it's going to be handled with dignity, honesty,**  
19 **professionalism, and you have a good sergeant**  
20 **who's doing his job, and knows how to do his**  
21 **job.**

22 Q. How about your coworkers, what type of  
23 reputation does Sergeant Bennett have with the  
24 people that are under his command?



1 A. He is extremely well liked and  
2 respected.

3 Q. And have you been able to determine  
4 what type of character he has as a person  
5 during the years that you've known him?

6 A. Yes. He has also become a very good  
7 friend of mine.

8 Q. Have you ever known Duane Bennett to  
9 be somebody that uses marijuana?

10 A. No.

11 Q. Did you ever hear anyone talk about  
12 Duane Bennett using marijuana in any way?

13 A. No, absolutely not.

14 MR. HERBERT: I have nothing further.

15 HEARING OFFICER WALKER: Any cross?

16 MR. POLK: No cross.

17 HEARING OFFICER WALKER: Thank you. You  
18 may be excused.

19 (Witness Excused.)

20 (Discussion off the  
21 record.)

22 HEARING OFFICER WALKER: Let's go back on  
23 the record.

24 Any other witnesses for today,

1 STATE OF ILLINOIS )  
2 COUNTY OF COOK ) SS:

3

4 MAUREEN A. WOODMAN, C.S.R., being first  
5 duly sworn, says that she is a court reporter  
6 doing business in the City of Chicago; that she  
7 reported in shorthand the proceedings had at  
8 the hearing of said cause; that the foregoing  
9 is a true and correct transcript of her  
10 shorthand notes, so taken as aforesaid, and  
11 contains all the proceedings of said hearing.

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MAUREEN A. WOODMAN

1 Mr. Herbert?

2 MR. HERBERT: No more today.

3 THE WITNESS: All right. We previously  
4 did off-the-record discussion for a continued  
5 date for the hearing when the Department's  
6 expert will be available for rebuttal, and then  
7 the Respondent's remaining witnesses, and then  
8 closing arguments and that's going to be June  
9 5, 2013, at 1:30 p.m. That's all for today.

10 (WHEREUPON, the proceedings  
11 were adjourned and continued  
12 to June 5, 2013, at the hour  
13 of 1:30 p.m.)

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